City of Lafayette Staff Report

For:	City Council
By:	Steven Falk, City Manager Tracy Robinson, Administrative Services Manager
Date Written:	July 21, 2008
Meeting Date:	July 28, 2008
Subject:	Continued Consideration of Local Sales Tax Increment for November Ballot

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Background

At its July 14th meeting, the City Council discussed the prospect of putting a local sales tax measure on the November 2008 ballot. This discussion was stimulated by the results of a recent poll of 600 likely Lafayette voters suggesting that a sales tax measure would be favorably received by Lafayette voters. 59% of those polled on the sales tax measure indicated support even after hearing a series of arguments against the measure.

The draft ballot measure discussed by the Council is as follows:

> **"To maintain and improve general city services in Lafayette, such as: fixing potholes; paving and maintaining 99 miles of city/neighborhood streets and roads; supporting the Lafayette Police Department, including patrols, neighborhood watch and crime prevention; and preserving parks and open space for recreation and to prevent hillside development; shall the City of Lafayette enact a ¾ cent transactions and use (sales) tax for 9 years with independent audits and all funds staying in our community?"**

At the 7/14 meeting, the Executive Director of the Chamber of Commerce reported that the Chamber's Board of Directors opposed the sales tax measure. Several Chamber members, local business owners and residents also expressed opposition to the proposed measure, proposing, generally, that higher sales tax rates in Lafayette would be disadvantageous to local businesses and could drive customers to competitors in neighboring communities or to shop on the internets.

Council asked staff to speak with the City's polling consultants on the possible ramifications of local Chamber of Commerce opposition to a sales tax measure. Staff was also directed to draft a revenue projection and expenditure plan for a 1/2 cent sales tax increase.

7A

Political Ramifications of Chamber Opposition

Charles Heath of the Tramutola consulting firm, which led the polling effort, has indicated that having a Chamber board officially oppose a sales tax ballot measure complicates a potential sales tax election. It is very unusual for a Chamber to oppose a measure of this nature. Tramutola has worked with one city where the Chamber opposed the measure and it passed (El Cajon, April 2005). Generally, Chambers of Commerce will take a neutral or supportive position on measures that are placed on the ballot. It is not known how many cities have drafted measures that were quashed and not placed on the ballot due to local Chamber opposition.

Mr. Heath acknowledges that active campaigning in opposition to the measure from business owners could have a negative effect on voter attitudes and be difficult to overcome. However, if the Chamber's opposition were perceived as a policy statement only – and did not evolve into an organized opposition campaign - the sales tax measure would still stand a good chance of passage. Chances of success could be further enhanced by building a broad coalition of support from homeowners and other interests to counterbalance the Chamber's opposition.

It should be noted that the recent polling did test a negative argument related to the impact the sales tax would have on local business. The argument was presented to respondents as: *"Opponents say increasing Lafayette's sales tax will chase shoppers away and hurt local businesses. Does hearing this argument make you much more likely or somewhat more likely to vote NO on the measure – or does it have no effect?"* Only 16% of respondents said this argument would make them much more likely to oppose the measure and 20% said it would make them somewhat more likely to vote no. A full 61% of voters said this argument had no effect on how they would vote. This argument was one of the least persuasive negative arguments presented to voters. Of the nine negative arguments tested, only three ranked below this argument.

Given the uncertainty created by the Chamber's opposition, Tramutola recommends that the City Council consider placing a ½ cent sales tax on the ballot to increase the chances of passage. This will keep the total sales tax rate in Lafayette below 9% and more consistent with tax rates in other Bay Area communities.

Tramutola strongly urges the Council not to overlook the unique advantages of the November 2008 election. Given that the November 2008 general election coincides with local Council elections, Lafayette is able to place a general sales tax measure on the ballot with a majority vote of the council and majority approval from voters. Calling a general tax election at any other time than a Council election cycle requires a unanimous vote of the Council and the declaration of a fiscal emergency. Lafayette's next opportunity to place a general tax on the ballot without a unanimous vote and fiscal emergency is not until November 2010.

Tramutola projects unprecedented voter turnout in November 2008 due to interest in the presidential election, and the firm's polling shows that higher voter turnout maximizes the chances for a successful ballot measure. Tramutola suggests that Lafayette will not see voter turnout as high until November, 2012 or perhaps beyond.

Tramutola's polling further indicates that a utility user's tax or special tax (parcel tax) are not viable options for the city at this time. Even with Chamber opposition, Tramutola believes that a general sales tax in November 2008 presents Lafayette's best chance of securing funding for critical programs and projects.

Financial Implications of ½ cent Option

Based on current sales tax receipts and using a straight line method for estimation, a ½ cent sales tax could generate up to $1.3M annually. Note, however, that while new and used vehicle sales represent a particularly large share of total retail sales volume, baseline sales taxes from vehicles purchased by Lafayette residents do not accrue to Lafayette under current law. If a local tax increment were to be successfully implemented, both new and used vehicle and boat purchases would be taxed with the proceeds returned to Lafayette. It's difficult to predict with accuracy how much vehicle taxes would add to total tax receipts, but staff estimates that vehicle purchases could add up to $200,000, for a total of $1,500,000.

Staff has prepared an alternative expenditure plan for this scenario. Note, however, that because the sales tax is considered a general tax, this plan would not bind this or future Councils:

Repairing Roads: ($1M annually; 66% of total proceeds)

More than 4,000 residents live on failed roads in Lafayette. The City has identified $31M in roadwork that should be completed during the next ten years, but only $23M in secure funding is available for this purpose. When factoring in inflation at 5%, this leaves a gap of $18M. If this plan and the tax were adopted, it would still leave a gap of $7M at the end of the 9 year period.

Expanding Parks and Preserving Open Space: ($200,000 annually; 13% of total)

Lafayette provides few active recreation facilities such as tot-lots, dog parks, swimming pools, recreation centers, tennis courts, or other typical municipal park offerings -- surprising for an affluent town purporting to cater to families. Meanwhile, the City has nearly completed its long term Parks Master Plan, which will identify the community's recreational needs. This annual infusion would be deposited into a protected account to maintain, expand, and acquire new park facilities and open space in Lafayette as it becomes available and in accordance with the City's new Parks Master Plan.

Downtown Beautiful ($200,000 annually; 13% of total)

Facing an annual operational deficit for downtown maintenance of more than $250,000 and following the defeat of a downtown assessment district that would have plugged that deficit, Lafayette needs additional funds to continue to provide top quality beautification and maintenance for current improvements. These funds will assure that the twinkle lights, the banner program, downtown landscaping efforts, co-sponsorship for Chamber events such as the Art & Wine Festival and Reservoir Run, and general support for the Chamber of Commerce will be preserved.

Downtown Patrol: ($100,000 annually; 7% of total)

Despite rising crime statistics and more than 20,000 calls for service each year, Lafayette provides the lowest levels of per-capita police staffing in Contra Costa County. Meanwhile, due to its own catastrophic budget problems, the State of California is likely to eliminate the

annual Community Oriented Policing Solutions (COPS) grant that Lafayette has received for almost a decade. These funds have paid for a portion of an additional officer dedicated to patrolling the downtown area, and whose goal is to spend 50% of his time on the bicycle in downtown Lafayette. These funds would backfill this loss from the State and relieve the City from having to eliminate this position.

Analysis

When making its decision about whether to place a sales tax measure on the ballot, the Council might consider the pro and con arguments indicated in Table A, below:

Table A

Arguments For and Against Placement of Sales Tax Measure on Ballot

Reasons to Place Sales Tax Measure on Ballot	*Reasons Not to Place Sales Tax Measure on Ballot*
The City faces an $18M gap in local road funding and, despite more than 20,000 calls for service each year, provides the lowest level of police service in Contra Costa County.	The City should operate more efficiently by eliminating non-critical programs such as landscaped medians, twinkle lights, streetpole banners, senior transportation, etc., and use those savings to pay for essential services.
59% of Lafayette residents polled indicated support for the measure.	The Lafayette Chamber of Commerce, representing 600 local businesses, opposes the tax.
The City has failed on four recent attempts to pass special tax measures requiring 2/3 + 1 majorities; this general tax would require a 50%+1 majority. Polls and recent local election failures suggest that no other tax that will deliver significant funding can pass.	A general tax is not constrained and could be used for any purpose. Future councils might allocate the funds to pay for non-essential services.
The cost to place measure before voters on the November ballot is minimal, estimated at ~$4,000. Costs for special elections can be as much as $75,000.	No group or individual has stepped forward and volunteered to run a campaign for the tax measure.
Failure to place the measure on the ballot thwarts the voters' right to decide whether they wish to pay for better roads, enhanced patrols, and more parkland.	In a representative democracy, elected officials are entrusted to make decisions for the community.
A ¾ cent sales tax measure could largely solve the city's road failures in nine years while bond measures typically require a 30 year payoff.	The measure would be jeopardized if the City Council members do not indicate unanimous support.
There is little or no evidence to support the proposition that local sales tax increments drive shoppers to neighboring communities. With rising transportation costs, tax savings achieved by driving to other communities could be offset by high fuel and parking costs.	Common sense and economic theory suggests that if the price for an identical good were higher in Lafayette than in other communities, shoppers might shop elsewhere.
Because the measure would fund improvements on a pay-as-you-go basis, it would save millions in interest costs when compared to a bond measure	Demand elasticity suggests that the tax proceeds would be below staff's straight-line estimates.
A subset of 4,000 homeowners living on failed streets who have been disproportionately disadvantaged by the City's lack of funding could benefit from passage of the measure.	A subset of specialty retail store owners whose shoppers might flee to other cities or internet shopping could be disproportionately disadvantaged by higher sales tax rates.
This is the only tax option where residents from other communities would pay for Lafayette's municipal services.	Active opposition from the Chamber and other groups weakens support for the measure and jeopardizes its passage.
Administrative and collection costs are very low compared to other tax options.	The economy is in bad shape now. If the City is interested in this type of measure, it should wait until 2010 or 2012 to put it on the ballot.
Voters in sixty four other California cities have successfully approved add-on sales tax increments, including Pacific Grove, Pismo Beach, El Cerrito, Capitola, , San Rafael, and Santa Rosa.	

Recommendation
Consider adoption of Resolution 2008-37, introduction of Ordinance 581 and adoption of Resolution 2008-38.

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

A Resolution of the City Council of the City of Lafayette, California Calling and Giving Notice of a General Tax Measure Election to be Consolidated with the Statewide General Election to be Held on November 4, 2008 in Order to Submit the Qualified Voters of the City of Lafayette a Proposed Ordinance Establishing a Transactions And Use Tax to be Administered by the State Board of Equalization	)	Resolution No. 2008-37

WHEREAS, to enhance General Fund revenues in order to address the needs of Lafayette citizens including, but not limited to, Downtown policing, repairing roads and expanding parks/open space, the City Council desires to establish a transactions and use tax ("Use Tax") at the rate of three-quarters of one percent (.75%) for a period of nine (9) years; and

WHEREAS, on November 6, 1996, the voters of the State of California approved Proposition 218 (California Constitution, Article XIIIC), an amendment to the State Constitution which requires that all general taxes which are imposed, extended or increased must be approved by a majority of the voters; and

WHEREAS, Proposition 218 requires the City Council to call an election which imposes, increases or extends a general tax only at a regularly scheduled general municipal election at which council members are to be elected, unless certain "emergency" findings are made; and

WHEREAS, the Measure set forth in this Resolution will be placed on the ballot for November 4, 2008, which is the next regularly scheduled general election at which Lafayette Council Members are to be elected; and

WHEREAS, pursuant to the Government Code Section 53724 (Proposition 62) and Revenue and Taxation Code Section 7285.9, a two-thirds vote of the City Council is required to place the Measure on the November 4, 2008 ballot; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES RESOLVE AS FOLLOWS:

Section 1. Findings.

The City Council finds that all of the preceding recitals are true and correct.

Section 2. Submission of Measure.

Pursuant to Government Code Section 53724, Revenue and Taxation Code Section 7285.9 and any other applicable requirements of the laws of the State of California relating to general law cities, the City Council, by a two-thirds (2/3) supermajority vote, hereby orders the following proposed ordinance to be submitted to the voters of the City at the regularly scheduled general municipal election to be consolidated with the Statewide General Election to be held on Tuesday, November 4, 2008:

"To maintain and improve general city services in Lafayette, such as: fixing potholes; paving and maintaining 99 miles of city/neighborhood streets and roads; supporting the Lafayette Police Department, including patrols, neighborhood watch and crime prevention; and preserving parks and open space for recreation and to prevent hillside development; shall the City of Lafayette enact a ¾ cent transactions and use (sales) tax for 9 years with independent audits and all funds staying in our community?"	YES NO

Section 3. Text of Ordinance.

The text of the ordinance to be submitted to the voters is attached as Exhibit A. By adoption of this Resolution, the City Council hereby introduces the Ordinance and the City Council intends to adopt the Ordinance only after it receives majority approval from the voters of Lafayette.

Section 4. Conduct of Election.

The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 5. Notice of Election.

Notice of the time and place of holding the election is hereby given, and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

Section 6. Impartial Analysis.

Pursuant to California Elections Code Section 9280, the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the measure, not to exceed 500 words in length, showing the effect of the measure on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk within ten (10) days following the adoption of this Resolution.

Section 7. Certification.

The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of said Council on July 28, 2008 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Mike Anderson, Mayor

ATTACHMENT "A"

Ordinance Regarding Transactions and Use Tax

[Attached behind this page]

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

An Ordinance of the People of the City of Lafayette)
Adding Chapter 7 to Title 9 of the Lafayette Municipal)
Code Establishing a Transactions and Use Tax to be) Ordinance No. 581
Administered by the State Board of Equalization)

The People of the City of Lafayette, California do hereby Ordain as follows:

Section 1. Chapter 7 is hereby added to Title 9 of the Lafayette Municipal Code and shall read as follows:

"Chapter 7. TRANSACTIONS AND USE TAX.

9-701 Short title of chapter.
This Chapter shall be known as the "City of Lafayette Transactions and Use Tax" and shall be applicable in the incorporated territory of the City of Lafayette ("City"). This Chapter shall complement, and not replace or supersede, the City's existing sales and use tax, as such tax is described in Chapter 3 of Title 9 of the Lafayette Municipal Code.

9-702 Purpose.
This Chapter of the Lafayette Municipal Code has been adopted for the following purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:
(a) To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2, which authorizes the City to adopt this tax. This Chapter shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.
(b) To adopt a retail transactions and use tax that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.
(c) To adopt a retail transactions and use tax that imposes a tax and provides a measure therefor that can be administered and collected by the State Board of Equalization in a manner that adapts itself as fully as practical to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the State Board of Equalization in administering and collecting the California State Transactions and Use Taxes.
(d) To adopt a retail transactions and use tax that can be administered in a manner that will, to the greatest degree possible, be consistent with the provisions of Parts 1.6 of Division 2 of the said Revenue and Taxation Code, and thereby minimize the cost of collecting City transactions and use taxes, and at the same time minimize the burden of record keeping upon persons subject to taxation under the provisions thereof.

9-703 Operative Date.
"Operative date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being set forth below.

9-704 Contract with State.
Prior to the operative date, the City shall contract with the State Board of Equalization to perform all functions incidental to the administration and operation of this transactions and use tax ordinance. If the

City has not contracted with the State Board of Equalization prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract. The Council may make any technical amendments to this Chapter required by the State Board of Equalization, except for any changes affecting the tax rate, tax methodology, or its manner of collection.

9-705 Imposition of Transactions and Use Tax – Rate.
For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of three-quarters of one percent (.75%) of any gross receipts of the retailer from the sale of all tangible personal property sold at retail in the City on and after the operative date of this Chapter.

9-706 Presumption as to Places of Sale.
For the purposes of this Chapter, all retail sales are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the Board of Equalization.

9-707 Imposition of Use Tax.
An excise tax is hereby imposed on the storage, use, or other consumption in the City of tangible personal property purchased from any retailer on or after the operative date of this Chapter, at the rate of three-quarters of one percent (.75%) of the sales price of the property subject to the tax. The sales price shall include delivery charges when such charges are subject to State sales and use regardless of the place to which delivery is made.

9-708 Adoption of Certain Sections of California Revenue & Taxation Code by Reference.
Except as otherwise provided in the Chapter and except in-so-far as they are inconsistent with the provisions of Parts 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with § 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this Chapter as though fully set forth herein.

9-709 Limitations on Adoption of State Law and Collection of Use Taxes.
In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:
(a) Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:
(1) The word "State" is used as a part of the title of the State Controller, State Treasurer, State Board of Control, State Board of Equalization, State Treasury, or the Constitution of the State of California;
(2) The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the State Board of Equalization, in performing the functions incident to the administration or operation of this Chapter.
(3) In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:
(i) Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

(ii) Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the State under the said provision of that code.

(4) In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

(b) The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

9-710 Permit Not Required.

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this Chapter.

9-711 Exemptions and Exclusions.

(a) There shall be excluded from the measure of the transactions and use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

(b) There are exempted from the computation of the amount of transactions tax the gross receipts from:

(1) Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

(2) Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

(i) With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

(ii) With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(3) The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Chapter.

(4) A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Chapter.

(5) For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(c) There are exempted from the use tax imposed by this Chapter, the storage, use or other consumption in this City of tangible personal property:

(1) The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

(2) Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity

issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

(3) If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this Chapter.

(4) If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Chapter.

(5) For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

(6) Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

(7) "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

(d) Any person subject to use tax under this Chapter may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

9-712 Amendments.

All amendments subsequent to the effective date of this Chapter to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this Chapter, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this Chapter. Except as provided above, this Chapter may be amended only by the voters pursuant to the provisions of the Elections Code and as provided by law.

9-713 Enjoining Collection Prohibited.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection hereunder, or Parts 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

9-714 Sunset of Tax.

The tax imposed by this Chapter shall automatically be terminated, without further action by the city council, or the electors of the City, nine (9) years after the date this Ordinance is both (i) approved by the voters and (ii) adopted by the City Council following said election. After the sunset date set forth above, the tax imposed by this Chapter can only be continued or reestablished by a two-thirds (2/3) vote

of the city council and a majority vote of Lafayette voters pursuant to California Propositions 62 and 218."

Section 2. Independent Audit of Tax Expenditures. The City's expenditure of the proceeds of the taxes established by this Ordinance shall be reviewed annually by a qualified independent third party auditor in conjunction with, and as part of, the City's usual annual financial audit and the results of such review shall be made available for inspection by the public.

Section 3. Effective Date. This ordinance is subject to a vote of the citizens of Lafayette and shall take effect, if approved by a majority of the voters voting at such election, immediately after (i) certification of the election by the City Clerk and (ii) final adoption by the City Council by a two-thirds (2/3) supermajority vote.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The People of the City of Lafayette hereby declare that they would have adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5. Certification/Summary. Following the City Clerk's certification that the citizens of Lafayette have approved this Ordinance, and the City Council's adoption of this Ordinance, the Mayor shall sign this Ordinance and the City Clerk shall cause the same to be entered in the book of original ordinances of said City; and shall cause the same, or a summary thereof, to be published as required by law.

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Mike Anderson, Mayor

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

A Resolution of the City Council of the City of Lafayette, California Requesting the Board of Supervisors of the County of Contra Costa To Consolidate a Municipal General Tax Measure Election to be Held On November 4, 2008 with the Statewide General Election to be Held On That Date Pursuant to § 10403 of the Elections Code; and Setting Priorities for Filing Written Arguments Regarding Said Election and Directing the City Attorney to Prepare an Impartial Analysis	)	Resolution No. 2008-38

WHEREAS, the City Council of the City of Lafayette has placed a General Tax Measure on the General Municipal Election ballot to be held on November 4, 2008; for the purpose of submitting to the voters the question relating to the Transactions and Use Tax; and;

WHEREAS, it is desirable that the election for the Municipal General Tax Measure be consolidated with the Statewide General election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the election department of the County of Contra Costa canvass the returns of the Municipal General Tax Measure election and that the election be held in all respects as if there were only one election.

WHEREAS, §§9220 and 9285 of the Elections Code of the State of California authorize the City Council, by majority vote, to adopt provisions to provide for the filing of rebuttal arguments for City measures submitted at municipal elections.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES RESOLVE AS FOLLOWS:

Section 1.

That pursuant to the requirements of §10403 of the Elections Code, the Board of Supervisors of the County of Contra Costa is hereby requested to consent and agree to the consolidation of a Municipal General Tax Measure election with the Statewide General election on Tuesday, November 4, 2008, for the purpose of submitting to the voters the following question relating to the Transactions and Use Tax.

Section 2.

That a measure is to appear on the ballot as follows:

"To maintain and improve general city services in Lafayette, such as: fixing potholes; paving and maintaining 99 miles of city/neighborhood streets and roads; supporting the Lafayette Police Department, including patrols, neighborhood watch and crime prevention; and preserving parks and open space for recreation and to prevent hillside development; shall the City of Lafayette enact a ¾ cent transactions and use (sales) tax for 9 years with independent audits and all funds staying in our community?"	Yes
	No

Section 3.

That the County election department is authorized to canvass the returns of the Municipal General Tax Measure election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 4.

That the Board of Supervisors is requested to issue instructions to the County election department to take any and all steps necessary for the holding of the consolidated election.

Section 5.

That the City of Lafayette recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

Section 6.

That the City Council authorizes (i) all members of the City Council, (ii) any individual voter eligible to vote on the above Measure, (iii) a bona fide association of such citizens or (iv) any combination thereof, to file primary written arguments in favor of or against the City Measure, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and to change the argument until and including the date fixed below by the City Clerk after which no arguments for or against the City measure may be submitted to the City Clerk.

The deadline to submit primary arguments for or against the City Measure pursuant to this Resolution is declared by the City Clerk to be August 8, 2008, 5:00 p.m.

The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.

Section 7.

That pursuant to Sections 9220 and 9285 of the Elections Code of the State of California, when the elections official has selected the arguments for and against the Measure which will be printed and distributed to the voters, the elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors of any argument in favor of the measure immediately upon receiving the arguments.

The author or a majority of the authors of an argument relating to a city measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign a rebuttal argument.

A rebuttal argument may not be signed by more than five individuals.

The rebuttal arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers.

The deadline for submitting rebuttal arguments is hereby declared by the City Clerk to be August 15, 2008, 5:00 p.m., which is 7 days after the final date for filing primary arguments.

Rebuttal arguments shall be printed in the same manner as the primary arguments. Each rebuttal argument shall immediately follow the primary argument which it seeks to rebut.

Section 8.

That all previous resolutions providing for the filing of rebuttal arguments for city measures are repealed.

Section 9.

That the provisions of Section 7 shall apply only to the election to be held on November 4, 2008, and shall then be repealed.

Section 10.

That the City Council directs the City Clerk to transmit a copy of the Measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure showing the effect of the Measure on the existing law and the operation of the Measure. The impartial analysis shall be filed with the City Clerk not later than August 8, 2008.

Section 11.

That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the election department of the County of Contra Costa.

Section 12.

That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED by the City Council of the City of Lafayette at a regular meeting of said Council on July 28, 2008 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

Joanne Robbins, City Clerk

APPROVED:

Mike Anderson, Mayor

LAFAYETTE HOMEOWNERS COUNCIL
649 Los Palos Drive
Lafayette, CA 94549

BOARD OF DIRECTORS

Maeve Pessis
Valley View Estates

Joe Garrity
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Lafayette Valley Estates

Guy Atwood
Springhill Valley

Carol Singer
Silver Springs

Cliff Tong
Burtonvalley.com

Tom Grimes
Silver Dell

Susan Callister
Happy Valley

Marie Blits
Lucas Drive Neighbors

Ivor Samson
Honorary Board Member

DIRECTORS EMERITUS

Jack Fox

Jim Todhunter

July 23, 2008

Mr. Michael Anderson, Mayor
Lafayette City Council
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

Re: Proposed Lafayette Sales Tax Measure for November 4, 2008 Ballot

Honorable Mayor Anderson and Members of the City Council:

Last evening, the Board of the Lafayette Homeowners Council heard presentations from Don Tatzin, Lafayette City Council Member; Jay Lifson, Executive Director of the Lafayette Chamber of Commerce; and Gordon Mattonen, spokesperson for the Lafayette Taxpayers Association. These presentations were followed by roughly two hours of thoughtful – and, at times, impassioned – Board deliberation.

In the end, it was decided that, in order to let the voters of Lafayette decide this issue for themselves, the Lafayette Homeowners Council supports placing a sales tax in the amount of ½ % on the November 2008 ballot. Should this measure pass, we expect that the City Council will direct at least 80% of the proceeds to the repair of Lafayette's neighborhood roads.

Thank you all for your many, many hours spent on behalf of the residents of Lafayette.

Very truly yours,

Tom A. Grimes

Tom A. Grimes, Acting President
Lafayette Homeowners Council